IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15570 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKUMAR, THROUGH GOVINDBHAI YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15570 of 2004

MR RM KHOLA for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1-2

DS AFF.NOT FILED (N) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/12/2004

ORAL JUDGEMENT

#. Rule. Shri M.R.Mengdey, learned A.G.P. waives service of rule on behalf of the respondent.

#. In this petition, the petitioner is the owner of Motor Vehicle No.HR-47, B-9017 registered with registration authority under the Motor Vehicles Act, 1988 and the petitioner has challenged the action of the respondents in ignoring GBW mentioned in RC books for recovering overload charges and compounding fees. It is the contention on behalf of the petitioner that inspite of the fact that the loan in the vehicle do not exceed the GBW mentioned in the RC book, the respondent authorities are compelling the petitioner to pay the overload charges and compounding fees. It is also further submitted that the Government notification issued by the Joint Director of Transport, Gujarat State dated 9.8.2002 has been quashed and set aside by this Court vide judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) in SCA no. 1290 of 2003 and other cognate matters. Learned advocate appearing on behalf of the petitioner has relied upon the judgment and order passed by the learned Single Judge of this Court dated 2.10.2004 in SCA No. 1290 of 2003 and other cognate matters.

#. In response to the notice issued by this Court, Shri M.R.Mengdey, learned A.G.P. appears on behalf of the respondent. He is not in a position to dispute that the facts of the petitioner's case are not covered by the judgment of the learned Single Judge of this court dated 25.10.2004 passed in SCA No.1290 of 2003. Considering the aforesaid facts and circumstances and for the reasons stated in the judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) passed in SCA No.1290 of 2003 and other cognate matters, the following order is passed :

O R D E R

The petition is partly allowed. It is declared that if the aforesaid vehicle whose number has been mentioned in para 1 of this order is carrying gross laden weight as per the certificate of registration, the respondents shall not take any penal action in respect of the aforesaid vehicles. However, the prayer regarding the refund of penalty or fine already paid by petitioner is not granted. It is clarified that if the certificate is not issued in accordance with the provisions of the Act, it will be open for the respondents to take appropriate action after following proper procedure as

contemplated under the Act. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)